



Federal Communications Commission
Washington, D.C. 20554

MAY 28 1998

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

EX PARTE OR LATE FILED

Robert W. Cantwell, Jr.
Supervisor, Town of Clayton
405 Riverside Drive
Clayton, New York 13624

Dear Mr. Cantwell:

Thank you for your letter dated December 2, 1997, which was forwarded to us from the office of Senator Daniel Patrick Moynihan, concerning the placement and construction of facilities for the provision of personal wireless services and radio and television broadcast services in your community. Your letter refers to three proceedings that are pending before the Commission. In MM Docket No. 97-182, the Commission has sought comment on a Petition for Further Notice of Proposed Rule Making filed by the National Association of Broadcasters and the Association for Maximum Service Television. In this proceeding, the petitioners ask the Commission to adopt a rule limiting the exercise of State and local zoning authority with respect to broadcast transmission facilities in order to facilitate the rapid build-out of digital television facilities, as required by the Commission's rules to fulfill Congress' mandate. In WT Docket No. 97-192 the Commission has sought comment on proposed procedures for reviewing requests for relief from State and local regulations that are alleged to impermissibly regulate the siting of personal wireless service facilities based on the environmental effects of radio frequency emissions, and related matters. Finally, in DA 96-2140 and FCC 97-264, the Commission twice sought comment on a Petition for Declaratory Ruling filed by the Cellular Telecommunications Industry Association seeking relief from certain State and local moratoria that have been imposed on the siting of commercial mobile radio service facilities.

Because all of these proceedings are still pending, we cannot comment on the merits of the issues at this time. However, I can assure you that the Commission is committed to providing a full opportunity for all interested parties to participate. The Commission has formally sought public comment in all three proceedings and, as a result, has received numerous comments from State and local governments, service providers, and the public at large. Your letter, as well as this response, will be placed in the record of all three proceedings and will be given full consideration.

Robert W. Cantwell, Jr.

2.

At the same time, the Commission is actively pursuing initiatives that we hope will render any Commission action limiting State and local authority unnecessary. Commission staff, working with the Commission's Local and State Government Advisory Committee, is bringing together representatives of industry and municipal governments to discuss mutually acceptable solutions to the challenges posed by facilities siting. Chairman Kennard has stated that preemption of local zoning authority should be a remedy of last resort, and that the Commission should not consider preemption until the possibilities for constructive dialogue have been exhausted.

Further information regarding the Commission's policies toward personal wireless service facilities siting, including many of the comments in the two proceedings involving personal wireless service facilities, is available on the Commission's internet site at <http://www.fcc.gov/wtb/siting>.

Thank you for your inquiry.

Sincerely,



for Steven E. Weingarten
Chief, Commercial Wireless Division
Wireless Telecommunications Bureau

Copy to: The Honorable Daniel Patrick Moynihan

cc: CWD

Dockets (2)

John Conwell

j:\congress\9800795

DANIEL P. MOYNIHAN
NEW YORK



United States Senate
WASHINGTON, DC 20510-3201

December 30, 1997

WTB
9/1/02
795

Congressional Liaison
Federal Communications Commission
1915 M Street, N.W.
Washington, D.C. 20554

Dear Sir or Madam:

I am referring the enclosed inquiries from some of my constituents regarding local zoning of cellular, radio and TV towers to your office.

My constituents would appreciate your careful consideration of these remarks, and your thoughts on what remedies there are for this situation. Please respond directly to them and send a copy to me.

I thank you for your attention to this matter.

Sincerely,

Daniel Patrick Moynihan

Enclosures



Town of Clayton
1000 Islands
405 Riverside Drive
Clayton, NY 13624
Phone - 315-686-3512
Fax - 315-686-2651

Robert W. Cantwell, Jr., Supervisor
Bonnie L. Rose, Town Clerk

December 2, 1997

Senator Daniel P. Moynihan
SR-464 Russell Senate Office Building
Washington, D.C. 20510-3201

Dear Senator Moynihan:

We are writing you about the Federal Communications Commission and its attempts to preempt local zoning of cellular, radio and TV towers by making the FCC the "Federal Zoning Commission" for all cellular telephone and broadcast towers. Both Congress and the courts have long recognized that zoning is a peculiarly local function. Please immediately contact the FCC and tell it to stop these efforts which violate the intent of Congress, the Constitution and the principles of Federalism.

In the 1996 Telecommunications Act, Congress expressly reaffirmed local zoning authority over cellular towers. It told the FCC to stop all rulemakings where the FCC was attempting to become a Federal Zoning Commission for such towers. Despite this instruction from Congress, the FCC is now attempting to preempt local zoning authority in three different rulemakings.

Cellular Towers - Radiation: Congress expressly preserved local zoning authority over cellular towers in the 1996 Telecommunications Act with the sole exception that municipalities cannot regulate the radiation from cellular antennas if it is within limits set by the FCC.

Cellular Towers - Monuments: ~~Patently, the FCC is preparing a rule banning the monuments~~ that some municipalities impose on cellular towers while they revise their zoning ordinances to accommodate the increase in the numbers of these towers. Again, this violates the Constitution and the directive from Congress.

Radio/TV Towers: The FCC's proposed rule on radio and TV towers is as bad: It sets an artificial limit of 21 to 45 days for municipalities to act on any local permit (environmental, building permit, zoning or other). Any permit request is automatically deemed granted if the municipality doesn't act in this time frame, even if the application is incomplete or clearly violates local law. The FCC's proposed rule would also prevent municipalities from considering the impacts such towers have on property values, the environment or aesthetics. Even safety

Town Council: Vivian F. Black Justin A. Taylor George E. Kittle Donald I. Turtotte

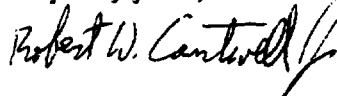
requirements could be overridden by the FCC! Also, all appeals of zoning and permit denials would go to the FCC, not to the local zoning authority in cases like VT 97-197, 1996 Docket 97-182 and DA 96-2140.

These actions violate the intent of Congress, the Constitution and the principles of Federalism. This is particularly true given that the FCC is a single purpose agency, with no zoning expertise.

Please do three things to stop the FCC: First write new FCC Chairman William Kennard and FCC Commissioners Susan Ness, Harold Furchtgott-Roth, Michael Powell and Gloria Triebler, asking them to stop this intrusion on local zoning authority. It cites VT 97-197, 1996 Docket 97-182 and DA 96-2140; second, join in the "Dear Colleague Letter" currently being prepared to go to the FCC from many members of Congress; and third, oppose any effort by congress to grant the FCC the power to act as a "Federal Zoning Commission" and preempt local zoning authority.

The following people at national municipal organizations are familiar with the FCC's proposed rules and municipalities' objections to them: Barrie Tabin at the National League of Cities, 202-626-5194; Eileen Huggard at the National Association of Telecommunications Officers and Advisors, 703-506-3275; Robert Fogel at the National Association of Counties, 202-393-6226; Kevin McCarty at the U.S. Conference of Mayors, 202-293-7330; and Cheryl Maynard at the American Planning Association, 202-872-0611. Feel free to call them if you have any questions.

Very truly yours,



Robert W. Cantwell Jr.
Supervisor

cc:[see attached list]

Copy List

Senator John McCain
241 SROB
Washington, DC 20510-0303

Senator Conrad Burns
187 SDOB
Washington, DC 20510-2603

Senator Kay Bailey Hutchison
283 SROB
Washington, DC 20510-4304

Senator Slade Gorton
730 SHOB
Washington, DC 20510-4701

Senator Dianne Feinstein
331 SHOB
Washington, DC 20510-0504

Representative Tom Bliley
2409 RHOB
Washington, DC 20515-4607

Representative W. J. Tauzin
2183 RHOB
Washington, DC 20515-1803

Representative Edward J. Markey
2133 RHOB
Washington, DC 20515-2107

Representative John D. Dingell
2328 RHOB
Washington, DC 20515-2216

Representative Bob Goodlatte
123 CHOB
Washington, DC 20515-4606

Representative James Moran
1214 LHOB
Washington, DC 20515-4608

Representative Bart Stupak
1410 LHOB
Washington, DC 20515-2201

Representative Joe Barton
2264 RHOB
Washington, DC 20515-4306

Ms. Barrie Tabin
Legislative Counsel
National League of Cities
1301 Pennsylvania Ave, NW, 6th Floor
Washington, DC 20004

Ms. Eileen Huggard
Executive Director
NATO
1650 Tysons Boulevard, Suite 200
McLean, VA 22102-3915

Mr. Robert Fogel
Associate Legislative Director
National Association of Counties
440 First Street, NW, 8th Floor
Washington, DC 20001

Mr. Kevin McCarty
Assistant Executive Director
U.S. Conference of Mayors
1620 Eye Street, 4th Floor
Washington, DC 20006

Ms. Cheryl Maynard
Government Affairs Coordinator
American Planning Association
1776 Massachusetts Ave. NW, 4th Floor
Washington, DC 20036



TARRYTOWN-ON-HUDSON

21 Wilkey Street • Tarrytown, New York 10591-3199

Mayor
EILEEN PILLA
Deputy Mayor
THOMAS T. BASHER
Trustees
LOUIS AGRO, JR.
PAUL J. IANOS, JR.
RAYMOND E. MCQUEEN, JR.
DOMENIC J. MORABITO
DONALD H. WHITELY

Village Administrator
CYNTHIA A. RUBINO
914-631-1885
Village Treasurer
GERALD J. BARBELET
914-631-7873
Village Clerk
LOUISE CAMILLIERE
914-631-1652
Building Inspector
RICHARD STEIN
914-631-3668
Chief of Public Works
BENEDICT SALANTRO, P.E.
914-631-0356
Fax No.: 914-631-8770

December 9, 1997

Senator Daniel P. Moynihan
United States Senate
464 Russell Senate Office Building
1st and C Streets, N.E.
Washington, D. C. 20510

Dear Senator Moynihan:

We are writing you about the Federal Communications Commission and its attempts to pre-empt local zoning of cellular, radio and TV towers by making the FCC the "Federal Zoning Commission" for all cellular telephone and broadcast towers. Both Congress and the courts have long recognized that zoning is a peculiarly local function. Please immediately contact the FCC and tell it to stop these efforts which violate the intent of Congress, the Constitution and principles of Federalism.

In the 1996 Telecommunications Act, Congress expressly reaffirmed local zoning authority over cellular towers. It told the FCC to stop all rulemaking where the FCC was attempting to become a Federal zoning Commission for such towers. Despite this instruction from Congress, the FCC is now attempting to pre-empt local zoning authority in three different rulemakings.

Cellular Towers - Radiation: Congress expressly preserved local zoning authority over cellular towers in the 1996 Telecommunications Act with the sole exception that municipalities cannot regulate the radiation from cellular antennas if it is within limits set by the FCC. The FCC is attempting to have the "exception swallow the rule" by using the limited authority Congress gave it over cellular tower radiation to review and reverse any cellular zoning decision in the U.S. which it finds is "tainted" by radiation concerns, even if the decision is otherwise perfectly permissible. In fact, the FCC is saying that it

Page Two
December 9, 1997

can "second guess" what the true reasons for a municipality's decision are, need not be bound by the stated reasons given by a municipality and doesn't even need to wait until a local planning decision is final before the FCC acts.

Some of our citizens are concerned about the radiation from cellular towers. We cannot prevent them from mentioning their concerns in a public hearing. In its rulemaking the FCC is saying that if any citizen raises this issue that this is sufficient basis for a cellular zoning decision to immediately be taken over the FCC and potentially overridden, even if the municipality expressly says it is not considering such statements and the decision is completely valid on other grounds, such as the impact of the tower on property values or aesthetics.

Cellular Towers – Moratoria: Relatedly the FCC is proposing a rule banning the moratoria that some municipalities impose on cellular towers while they revise their zoning ordinances to accommodate the increase in the numbers of these towers. Again, this violates the Constitution and the directive from Congress prohibiting the FCC from becoming a Federal Zoning Commission.

Radio/TV Towers: The FCC's proposed rule on radio and TV towers is as bad: It sets an artificial limit of 21 to 45 days for municipalities to act on any local permit (environmental, building permit, zoning or other.) Any permit request is automatically deemed granted if the municipality doesn't act in this timeframe, even if the application is incomplete or clearly violates local law. And the FCC's proposed rule would prevent municipalities from considering the impacts such towers have on property values, the environment or aesthetics. Even safety requirements could be overridden by the FCC! And all appeals of zoning and permit denials would go to the FCC, not to the local courts.

This proposal is astounding when broadcast towers are some of the tallest structures known to man – over 2,000 feet tall, taller than the Empire State Building. The FCC claims these changes are needed to allow TV stations to switch to High Definition Television quickly. But The Wall Street Journal and trade magazines state there is no way the FCC and broadcasters will meet the current schedule anyway, so there is no need to violate the rights of municipalities and their residents just to meet an artificial deadline.

These actions represent a power grab by the FCC to become the Federal Zoning Commission for cellular towers and broadcast towers. They violate the intent of Congress, the Constitution and principles of Federalism. This is particularly true given that the FCC is a single purpose agency with no zoning expertise, that never saw a tower it didn't like.

Please do three things to stop the FCC: First, write new FCC Chairman William Kennard and FCC Commissioners Susan Ness, Harold Furchtgott-Roth, Michael Power and Gloria Tristani telling them to stop this intrusion on local zoning authority in cases WT 97-197,

Page Three

December 9, 1997

MM Docket 97-182 and DA 96-2140; second, join in the "Dear Colleague Letter" currently being prepared to go to the FCC from many members of Congress; and third, oppose any effort by Congress to grant the FCC the power to act as a "Federal Zoning Commission" and pre-empt local zoning authority.

The following people at national municipal organizations are familiar with the FCC's proposed rules and municipalities' objections to them: Barrie Tabin at the National League of Cities, 202-626-3194; Eileen Huggard at the National Association of Telecommunications Officers and Advisors, 703-506-3275; Robert Fogel at the National Association of Counties, 202-393-6226; Kevin McCarty at the U.S. Conference of Mayors, 202-293-7330; and Cheryl Maynard at the American Planning Association, 202-872-0611. Feel free to call them if you have questions.

Very truly yours,



Eileen Pilla
Mayor

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Government Affairs Coordinator
American Planning Association
1776 Massachusetts Ave. NW, 4th Floor
Washington, DC 20036



Town of Newstead

Church & John St.
Akron, N.Y. 14001

P.O. Box 227
Phone (716) 542-4573

FAX PHONE (716) 542-3702

December 9, 1997

SUPERVISOR
DONALD C. HOLMES

COUNCILMEN
GERALD F. SUMME
THOMAS L. COWAN
THOMAS R. GEORGE
DAVID L. CUMMINGS

TOWN CLERK - REGISTRAR
TAX COLLECTOR
CAROLE D. BORCHERT

DEPUTY TOWN CLERK
MARY JANE VAUGHN

HIGHWAY SUPERINTENDENT
CAROL EGGAN

CODE ENFORCEMENT OFFICER
DONNAL D. FOLGER

ATTORNEY FOR THE TOWN
NATHAN S. NEILL

ASSESSOR
FREDERICK J. PASK, JR.

Hon. Daniel Patrick Moynihan
United States Senate
464 Russell Senate Office Bldg.
Washington, D.C. 20510

Dear Senator Moynihan:

I am writing to you to express the concern of the Town Board over attempts by the FCC to set itself up as the de facto Appeals Board with respect to town decisions in cellular and broadcast tower cases. For many years both the courts and the United States Congress have recognized zoning as a local function. We believe very strongly that it should remain a local function.

The 1996 Telecommunications Act reaffirmed some local zoning authority with respect to cellular towers. It now appears that the FCC is attempting to set itself up as Judge and Jury for the review of all matters related to cellular and broadcast towers. They want to be the ones to have final say as to whether a decision is "tainted".

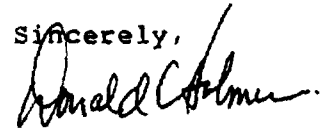
Suppose, for example, that we have a public hearing of public comment at a board meeting by some resident who has radiation concerns. We understand that we can not base our decision upon those concerns. We also understand that we can't stop people from saying what is on their mind and the fact is many citizens still feel this is a problem. We are not going to hold a hearing and tell people they can only speak if they don't say anything to offend the FCC. We don't want the FCC then saying "Well your decision must be tainted because of what citizens said"

PAGE 2
Senator Moynihan
12-9-97

Broadcast towers are a particular concern since they are, in many cases, substantially taller than many buildings in New York City. We are frankly incensed that the Town's review of such structures should be appealable to faceless Washington functionaries. In addition to the principle involved, think of the tremendous burden to small municipalities of having to fight zoning appeals in Washington rather than local courts!

We urge you to contact FCC Commissioners to make clear to them that Congress did not grant them this authority. Specifically tell them to stop this intrusion on local zoning in cases WT 97-197, MM Docket 97-182 and DA 96-2140. We also urge that you speak with your colleagues and take whatever steps are necessary to assure that the FCC never has the power to override or preempt local zoning authority.

Sincerely,



Donald C. Holmes
Supervisor

DCH:cdb



TOWN OF POESTENKILL

POESTENKILL, NEW YORK 12140

PHONE
(518) 283-5100

December 5, 1997

Senator Daniel Moynihan
U. S. Senate
405 Lexington Avenue, 62nd Floor
New York, NY 10174

Dear Senator Moynihan:

I am writing you at the direction of the Poestenkill Town Board about the Federal Communications Commission and its attempts to preempt local zoning of cellular, radio and TV towers by making the FCC the "Federal Zoning Commission" for all cellular telephone and broadcast towers. Both Congress and the courts have long recognized that zoning is a peculiarly local function. Please immediately contact the FCC and tell it to stop these efforts which violate the intent of Congress, the Constitution and principles of Federalism.

In the 1996 Telecommunications Act, Congress expressly reaffirmed local zoning authority over cellular towers. It told the FCC to stop all rulemakings where the FCC was attempting to become a Federal Zoning Commission for such towers. Despite this instruction from Congress, the FCC is now attempting to preempt local zoning authority in three different rulemakings.

Cellular Towers - Radiation: Congress expressly preserved local zoning authority over cellular towers in the 1996 Telecommunications Act with the sole exception that municipalities cannot regulate the radiation from cellular antennas if it is within limits set by the FCC. The FCC is attempting to have the "exception swallow the rule" by using the limited authority Congress gave it over cellular tower radiation to review and reverse any cellular zoning decision in the U.S. which it finds is "warranted" by radiation concerns, even if the decision is otherwise perfectly permissible. In fact, the FCC is saying that it can "second guess" what the true reasons for a municipality's decision are, need not be bound by the stated reasons given by a municipality and doesn't even need to wait until a local planning decision is final before the FCC acts.

Some of our citizens are concerned about the radiation from cellular towers. We cannot prevent them from mentioning their concerns in a public hearing. In its rulemaking the FCC is saying that if any citizen raises this issue that this is sufficient basis for a cellular zoning decision to immediately be taken over by the FCC and potentially reversed, even if the municipality expressly says it is not considering such statements and the decision is completely valid on other grounds, such as the impact of the tower on property values or aesthetics. This presumption on the part of the FCC, of general dishonesty and lack of integrity of local governments is unjust, untrue, and intolerable.

Page Two
December 5, 1997

Cellular Towers - Moratoria: Relatedly the FCC is proposing a rule banning the moratoria that some municipalities impose on cellular towers while they revise their zoning ordinances to accommodate the increase in the numbers of these towers. Again, this violates the Constitution and the directive from Congress preventing the FCC from becoming a Federal Zoning Commission.

RADIO/TV Towers: The FCC's proposed rule on radio and TV towers is as bad: It sets an artificial limit of 21 to 45 days for municipalities to act on any local permit (environmental, building permit, zoning or other). Any permit request is automatically deemed granted if the municipality doesn't act in this time frame, even if the application is incomplete or clearly violates local law. And the FCC's proposed rule would prevent municipalities from considering the impacts, such as towers have on property values, the environment or aesthetics. Even safety requirements could be overridden by the FCC! And all appeals of zoning and permit denials would go to the FCC, not to the local courts. If such a short time limit were in fact necessary, it would imply exceedingly poor and haphazard planning on the parts of both the applicant and the FCC.

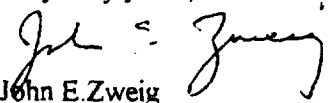
This proposal is astounding when broadcast towers are some of the tallest structures known to man -- over 2,000 feet tall, taller than the Empire State Building. The FCC claims these changes are needed to allow TV stations to switch to High Definition Television quickly. But *The Wall Street Journal* and trade magazines state there is no way the FCC and broadcasters will meet the current schedule anyway, so there is no need to violate the rights of municipalities and their residents just to meet an artificial deadline.

These actions represent a power grab by the FCC to become the Federal Zoning Commission for cellular towers and broadcast towers. They violate the intent of Congress, the Constitution and principles of Federalism. This is particularly true given that the FCC is a single purpose agency, with no zoning expertise, that never saw a tower it didn't like.

Please do three things to stop the FCC: First, write new FCC Chairman William Kennard and FCC Commissioners Susan Ness, Harold Furchtgott-Roth, Michael Powell and Gloria Tristani telling them to stop this intrusion on local zoning authority in cases WT97-197, MM Docket 97-182 and DA 96-2140; second, join in the "Dear Colleague Letter" currently being prepared to go to the FCC from many members of Congress; and third, oppose any effort by the Congress to grant the FCC the power to act as a "Federal Zoning Commission" and preempt local zoning authority.

The following people at national municipal organizations are familiar with the FCC's proposed rules and municipalities' objections to them: Barrie Tabin at the National League of Cities, 202-626-3194; Eileen Huggard at the National Association of Telecommunications Officers and Advisors, 703-506-3275; Robert Fogel at the National Association of Counties, 202-393-6226; Kevin McCarty at the U.S. Conference of Mayors, 202-293-7330; and Cheryl Maynard at the American Planning Association, 202-872-0611. Feel free to call them if you have any questions, or contact us if we can in any way be of assistance in this effort.

Very truly yours,


John E. Zweig
Supervisor

Village of Kings Point

32 STEPPINGSTONE LANE, KINGS POINT, N.Y. 11024 • Village Hall: (516) 482-7872 • Police Department: (516) 482-1000 • Fax #: (516) 482-9061



MAYOR: Michael C. Kalnick

December 3, 1997

Senator Daniel Patrick Moynihan
405 Lexington Avenue, 62nd Floor
New York NY 10174

Dear Senator Moynihan:

We are writing you about the Federal Communications Commission and its attempts to preempt local zoning of cellular, radio and TV towers by making the FCC the "Federal Zoning Commission" for all cellular telephone and broadcast towers. Both Congress and the courts have long recognized that zoning is a peculiarly local function. Please immediately contact the FCC and tell it to stop these efforts which violate the intent of Congress, the Constitution and principles of Federalism.

In the 1996 Telecommunications Act, Congress expressly reaffirmed local zoning authority over cellular towers. It instructed the FCC to stop all rulemakings where the FCC was attempting to become a Federal Zoning Commission for such towers. Despite this instruction from Congress, the FCC is now attempting to preempt local zoning authority on three different rulemakings.

Cellular Towers - Radiation: Congress expressly preserved local zoning authority over cellular towers in the 1996 Telecommunications Act with the sole exception that municipalities cannot regulate the radiation from cellular towers if it is within limits set by the FCC. The FCC is attempting to have the "exception swallow the rule" by using the limited authority Congress gave it over cellular tower radiation to review and reverse any cellular zoning decision in the U.S. which it finds is "tainted" by radiation concerns, even if the decision is otherwise perfectly permissible. In fact, the FCC is saying that it can "second guess" what the true reasons for a municipality's decision are, need not be bound by the stated reasons given by a municipality and doesn't even need to wait until a local planning decision is final before the FCC acts.

Some of our citizens are concerned about the radiation from cellular towers. We cannot prevent them from mentioning their

Senator Daniel Patrick Moynihan

December 3, 1997, considering such matters

Page 2

concerns in a public hearing. In its rulemaking the FCC is saying that if any citizen raises this issue that this is sufficient basis for a cellular zoning decision to immediately be taken over by the FCC and potentially reversed, even if the municipality expressly ~~says~~ ~~FCC is not~~ considering such statements and the decision is completely valid on other grounds, such as the impact of the tower on property values or aesthetics.

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These actions represent an unjustified attempt by the FCC to become the Federal Zoning Commission for cellular towers and broadcast towers. They violate the intent of Congress, the Constitution and principles of Federalism. This is particularly true given that the FCC is a single-purpose agency with no zoning expertise that never saw a tower it didn't like.

Senator Daniel Patrick Moynihan

December 30, 1987

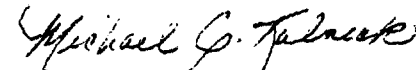
Page 3

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Very truly yours,

VILLAGE OF KINGS POINT



Michael C. Kalnick
Mayor

MCK:fav

cc: (see attached list)